

Small Business Administration

§ 117.7

(f) *Exception 3.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section if an age distinction is contained in that part of a Federal, State or local statute or ordinance adopted by an elected general purpose legislative body which provides any benefits or assistance to, establishes criteria for participation in, or describes intended beneficiaries or target groups in age-related terms.

(g) The burden of proving that an age distinction or other action falls within the exceptions outlined in paragraphs (d), (e), and (f) of this section on the recipient of Federal financial assistance.

§ 117.5 Illustrative applications.

(a) *Discrimination in providing financial assistance.* Development companies and small business investment companies, which apply for or receive any financial assistance may not discriminate on the ground of age in providing financial assistance to small business concerns. Such discrimination prohibited by § 117.4 includes but is not limited to the failure or refusal, because of the age of the applicant, or the age of the applicant's principal owner or operating official to extend a loan or equity financing to any business concern; or, in the case of financing which has actually been extended, the failure or refusal because of the age of the recipient, or the age of recipient's principal owner or operating official to accord the recipient fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(b) *Discrimination in accommodations or services.* Small Business Concerns and others who or which apply for or receive any financial assistance in a program administered by the Small Business Administration, such as but not limited to physicians, dentists, hospitals, schools, libraries, and other individuals or organizations may not discriminate in the treatment, accommodations or services they provide to their patients, students, members, passengers, or members of the public, except when the normal operation or statutory objective of the business or activity of the intended beneficiary is designated in age-related terms, wheth-

er or not operated for profit. Action by such business or activity to be excluded from compliance with this regulation must fall within the exceptions enumerated in § 117.4 (d), (e), and (f) of this part.

(c) The discrimination prohibited by § 117.5(b) includes, but is not limited to the failure or refusal, because of age, to accept a patient, student, member, customer, client, or passenger, except when the imposition of this prohibition would interfere with the normal operation of the business, e.g., pediatricians, nursery schools, geriatric clinics.

§ 117.6 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the Agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's business or program on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 117.7 Assurances required.

An application for financial assistance under any program administered by the Small Business Administration shall, as a condition of its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. SBA shall specify the form of the foregoing assurance for each program, and the extent to which

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like assurances will be required of contractors and subcontractors, transferees, successors, and other participants in the program.

§ 117.8 Responsibilities of SBA recipients.

(a) Each SBA recipient has the primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford SBA access to its records to the extent SBA finds necessary to determine whether the recipient is in compliance with the Act and these regulations. (OMB No. 3245 0076)

(b) Where a recipient passes on Federal financial assistance from SBA to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(c) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protections against discrimination provided by the Act and these regulations.

(d) Whenever an assessment indicates a violation of the Act and the SBA regulations, the recipient shall take corrective action.

§ 117.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Record Keeping.* Each recipient shall keep records in such form, and containing such information which SBA determines may be necessary to ascertain whether the recipient has complied or is complying with this part (OMB No. 3245 0076). In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, the small business concern shall also keep such records and information as may be nec-

essary to enable SBA to determine if the small business concern is complying with this part.

(c) Each recipient shall provide to SBA, upon request, information and reports which SBA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) *Access to sources of information.* Each recipient shall permit reasonable access by SBA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish the information, the recipient shall so certify and shall set forth what efforts it has made to obtain the required information. The recipient will be held responsible for submitting the information. Failure to submit information or permit access to sources of information required by SBA will subject the recipient to enforcement procedure as provided in § 117.15 of this part.

(Information collection requirements in paragraph (c) were approved by the Office of Management and Budget under control number 3245-0076)

§ 117.10 Review procedures.

(a) SBA shall from time to time review the practices of recipients to determine whether they are complying with this part. As part of a compliance review or complaint investigation, SBA may require a recipient employing 15 or more full-time employees to complete a written self-evaluation, in a manner specified by the Agency, of any age distinction imposed in its program or activity receiving Federal financial assistance.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, SBA will attempt to achieve voluntary compliance with the Act. If voluntary compliance with the recipient cannot be achieved, such recipient will be subject to the enforcement procedure contained in § 117.15 of these regulations. A